

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE**

Kimberly McCormick,
Plaintiff,

v.

Case No. 1:22-cv-00087-LM

Town of Wakefield, NH, et al.
Defendants.

**TOWN OF WAKEFIELD’S
MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendant, Town of Wakefield, submits this motion for judgment on the pleadings with respect to the remainder of Plaintiff’s complaint against it and states as follows:

1. Plaintiff, appearing pro se, initiated her complaint against, amongst others, the Town of Wakefield. (ECF Doc. 1.)
2. Following preliminary review of Plaintiff’s pro se complaint consistent with 28 U.S.C. § 1915(e)(2) and Local Rule 4.3(d)(2), the Magistrate Judge divined three claims against the Town of Wakefield within Plaintiff’s operative complaint: (1) a claim that Town of Wakefield Police unlawfully seized certain property from Plaintiff and allegedly injured Plaintiff in the course of seizing such property (“property claim”); (2) a claim that Town of Wakefield Police officers unlawfully removed 11 chickens from Plaintiff’s property (“livestock claim”); and (3) a claim that the Town of Wakefield violated RSA 80:38-a by failing to notify Plaintiff of either a pending tax deficiency or the taking of the property by tax deed (“tax deficiency notice claim”). See (ECF Doc. 6 at 3–5.)
3. The Town moved to dismiss Plaintiff’s “livestock claim,” arguing that such a claim was barred by the statute of limitations. (ECF. Doc. 8.) The Court granted the Town’s motion on September 22, 2023. (ECF Doc. 23.)

4. The Town now moves for judgment on the pleadings with respect to the remainder of Plaintiff's complaint. Based on the contemporaneously filed memorandum of law, the Town of Wakefield is entitled to judgment of the pleadings on Plaintiff's remaining claims against it because (1) Plaintiff's "tax deficiency notice claim" claim is barred by the doctrines of res judicata and/or collateral estoppel and (2) Plaintiff has failed to state a federal-law claim against the Town consistent with Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978) and its progeny. See Fed. R. Civ. P. 12(c); Local Rule 7.1(a)(2). It follows that the Court should grant the Town of Wakefield's motion for judgment on the pleadings and dismiss Plaintiff's complaint against it.

5. Due to the dispositive nature of this motion, concurrence was not sought. See Local Rule 7.1(c).

6. While no oral argument is requested with respect to the present motion for judgment on the pleadings, Town of Wakefield reserves the right to request oral argument.

WHEREFORE, Defendant Town of Wakefield respectfully requests that the Court:

- A. Grant its motion for judgment on the pleadings for the reasons set forth in the accompanying memorandum of law;
- B. Dismiss Plaintiff's complaint against the Town of Wakefield with prejudice; and
- C. Grant such other relief that is just.

Respectfully submitted,

TOWN OF WAKEFIELD

By its Attorneys,

GALLAGHER, CALLAHAN & GARTRELL, P.C.

Date: November 3, 2023

By: /s/ Matthew V. Burrows

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to all counsel of record via ECF.

Date: November 3, 2023

By: /s/ Matthew V. Burrows

Matthew V. Burrows, Esq. (#20914)